



STATE OF CONNECTICUT

OFFICE OF THE  
PROBATE COURT ADMINISTRATOR

PAUL J. KNIERIM, JUDGE  
Probate Court Administrator

THOMAS E. GAFFEY  
Chief Counsel

HELEN B. BENNET  
Attorney

DEBRA COHEN  
Attorney

186 NEWINGTON ROAD  
WEST HARTFORD, CT 06110

TEL (860) 231-2442  
FAX (860) 231-1055

**To:** Senate Co-Chair Mary Ann Handley  
House Co-Chair Doug McCrory  
Senate Ranking Member Sam Caligiuri  
House Ranking Member Arthur O'Neill  
Honorable Members of the Judicial and Corrections Subcommittee

**From:** Paul J. Knierim, Judge  
Probate Court Administrator

**Re:** Appropriation Request for the Probate Court System

**Date:** February 23, 2009

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Thank you for allowing me the opportunity to address the subcommittee at this critical time in the history of Connecticut's probate court system. I know that I come before you when the General Assembly is facing enormous challenges, so I am especially grateful for your time and consideration.

To get right to the point, the probate system requires general fund support to avert bankruptcy in the next two years. Based on current revenue projections, the system will need \$4 million in additional funding in FY 2010 and \$8.4 million in FY 2011 simply to remain solvent. Those figures are in addition to our current \$2.5 million appropriation for the regional children's courts and the \$1.1 million in funding for the Kinship and Respite Funds that we administer. The new funding that we are seeking is to cover expenses in two areas: 1) the cost of providing attorneys and related services to indigent persons and 2) retiree health insurance.

HB 6027 embodies the Strategic Plan for the Probate System that the probate judges and my office have jointly developed to address the probate system's financial problems and to improve the professionalism of the courts. The Governor has also made a proposal regarding the probate courts as part of her

budget, which is contained in Governor's Bill 6385. I'll offer an overview of those proposals in a moment, but please keep in mind two key factors when thinking about the upcoming biennial budget. First, neither proposal can be implemented before January 2011 because all 117 probate judges are currently serving four year terms that do not expire until then. Second, while the system can clearly be made more efficient, self-sufficiency is neither a practical nor an appropriate goal.

### **Background on the Finances of the Probate System**

The Connecticut probate system is largely self-funded; over 90% of our revenue comes from the statutory fees that the courts collect. The system has been operating with a growing budget deficit since fiscal year 2005. The current year deficit is projected at \$4.4 million; the projected deficits for fiscal years 2010 and 2011 are \$7 million and \$8.4 million, respectively. The system has remained solvent despite these deficits by drawing down on the Probate Court Administration Fund. With only \$6.9 million remaining on hand as of January 31, 2009, we project that the Probate Court Administration Fund will be exhausted early in 2010.

There are several causes of the probate system's deficit and the depletion of the Probate Court Administration Fund. Three factors are most significant.

First, the caseload of the probate courts has been changing. Traditionally, the bulk of probate revenues has been derived from decedents' estates and trusts. As the attached chart entitled "The Changing Caseload of the Probate Courts" illustrates, cases involving children, the elderly, and mental health issues represent a growing proportion of the workload in our courts, while the number of estate and trust matters has been declining. These social service matters generate less revenue but demand significantly greater judicial resources.

Second, the system has seen a dramatic increase in indigent expenses at the same time that the state has discontinued general fund support for these costs. Indigent expenses include the costs of attorneys, medical evaluations, and conservators for indigent persons, and are constitutionally mandated in most cases. Historically, the state appropriated funds to cover all or a portion of these expenses, but funding has been negligible since fiscal year 2002-03. In the current year, the state appropriated only \$25,000 for indigent expenses, while the total cost to the Probate Court Administration Fund has risen to \$4.5 million. The attached chart shows the dramatic increase in this expense during the past five years.

Third, the state has transferred a total of \$20 million from the Probate Court Administration Fund to the general fund: \$5 million in 1991 and an additional \$15 million in 2002. The transfers point out that self-sufficiency is an elusive goal when the state has, at times, used the probate system as a source of revenue for general fund operations.

We expect that the system's financial troubles will likely be exacerbated by the current condition of the economy, and I must emphasize that the updated figures that I am reporting to you today are very different from the numbers that we presented in the Strategic Plan only one month ago. Our newest revenue projections are now showing a 4.6% decline in gross revenue in calendar year 2009 and an additional 4.8% decline in calendar year 2010. We expect this reduction in light of declining asset values because 77% of our revenue is derived from the fees on decedents' estates, which are calculated as a percentage of the value of estate assets.

### **Proposed Solutions to the Financial Problems**

The Strategic Plan that the probate judges are offering and the Governor's proposal share several key features, but they also differ in significant ways. There are three elements of the plans that I would like to highlight today:

- Both proposals would centralize accounting, payroll, and budgeting functions, which are presently handled by each court. Going forward, we would establish system-wide pay ranges for staff positions, authorized staffing levels, and budgets for office expenses. This measure would eliminate a significant administrative burden on the courts, improve efficiency, and establish appropriate cost controls that presently do not exist.
- Both the Strategic Plan and the Governor's proposal would restructure the manner in which probate judges are compensated. Currently, the compensation of judges is determined principally by the revenue of the courts. As a result, judges performing the same amount and character of work may receive widely varying amounts of compensation, based solely upon the relative wealth of their communities. Compensation under the Strategic Plan would be based instead upon population served and court workload. This would not only ensure that judges' pay correlates with the amount of work performed, but it would also result in approximately \$530,000 in savings in the first year of implementation.
- The proposals also both seek to reduce the number of courts. The Strategic Plan asks the legislature to establish regional probate planning committees, coupled with financial incentives for municipalities, judges, and court staff, to facilitate voluntary consolidation. These committees would help municipalities develop plans to establish regional probate courts that fit the needs of their communities. A November 15, 2009 deadline for committee work would enable the General Assembly to implement consolidations before the next four-year term for probate judges, which begins on January 5, 2011. In contrast, the Governor's proposal would eliminate 81 courts, leaving a system of 36 courts sharing borders with the senate districts.

It is the third element, consolidation of courts, in which the two proposals differ most significantly. While we are completely open to further discussion about how to resolve this financial crisis, I would like to express two areas of concern about the Governor's approach.

First, the 36-court approach threatens to undermine the close connection between the probate courts and the communities that they serve. Using senate districts would divide many municipalities, including all of the larger cities, into two or more probate courts. Reapportionment would bring a logistical nightmare every ten years as hundreds of files would need to be transferred among courts. In more rural areas of the state, probate districts would become geographically huge.

Second, we do not see that the Governor's proposal can achieve the projected \$9 million in savings, for several reasons:

- The consolidation of 81 courts would be counterproductive from a facilities standpoint. State law requires municipalities to provide space, rent free, for their courts, and most courts are housed in city and town halls. We anticipate that many municipalities would need to lease commercial space to accommodate the much larger court operations associated with a 36-court plan. A conservative estimate of the expense to cities and towns is \$1.5 million in costs to build out new facilities and an annual out-of-pocket expense for rent of \$1.3 million.
- The Governor's plan assumes a 20% reduction in staff expense, despite the fact that the workload of the courts would continue even if the system had fewer courts. Our analysis of current staffing does not indicate significant potential for reduction if we are to maintain current services and our ability to process cases promptly. We do foresee a modest reduction in the number of court staff because many positions would transition from part-time to full-time, but we do not expect any net financial savings from this.
- The largest share of projected savings from the Governor's plan is reduced compensation and benefits from the elimination of judicial positions. While the proposal would reduce judicial compensation significantly, the projected savings in health insurance expense is not achievable because the probate system – unlike any other state agency – pays for retiree health insurance from operating funds. Since most incumbents are already vested in the retirement plan, the savings in health insurance expense would be minimal.
- Taking these factors into consideration, our analysis of the total savings that could be achieved from the Governor's plan is less than \$2 million annually. None of that savings can be realized until the restructuring can

be implemented in 2011, halfway through the second year of the biennial budget.

### **The Importance of the Probate Courts to Connecticut's Citizens**

While the probate courts are commonly associated with estates, our courts are also integral in the delivery of critical social services to children, the elderly, and individuals with mental illness and developmental disabilities. The legislature has assigned the probate system with responsibility for these areas because the probate courts are uniquely suited to such intensely personal family matters. The courts are readily accessible to the communities that they serve; probate judges frequently conduct hearings at hospitals and nursing homes to facilitate participation by the parties. Court staff is highly service oriented. Most cases are resolved more quickly and at less expense than matters heard in the superior court. This is due, in considerable part, to the fact that the proceedings are relatively informal and many families feel comfortable without the assistance of an attorney. Probate judges are specialists who approach their cases with fairness and compassion.

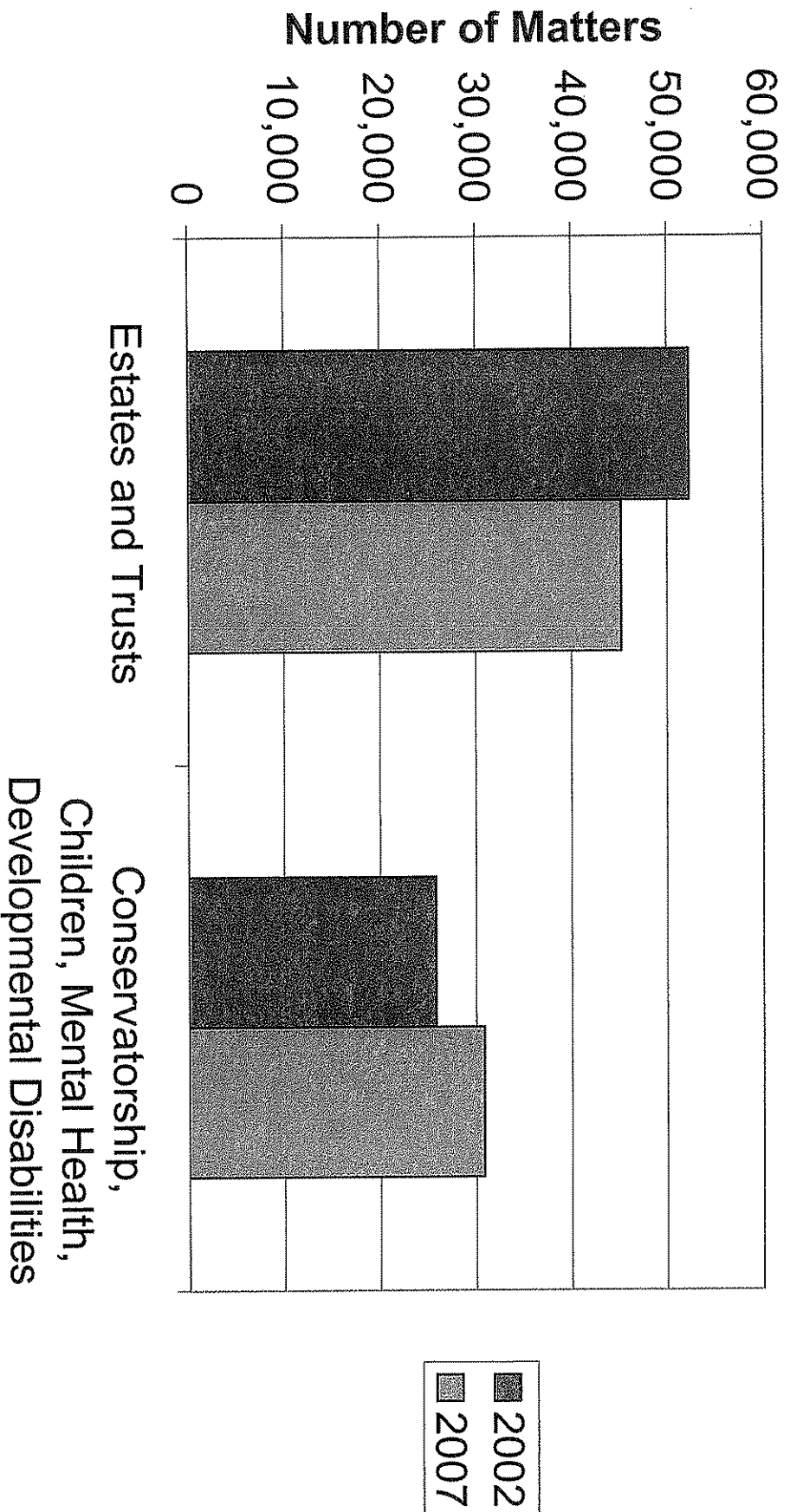
There is a key point here: probate courts deliver these services in a very cost-effective manner. Probate courts provide a framework for families to help themselves. One excellent example is the regional children's courts, a program that my predecessor, Judge James Lawlor, initiated. These innovative courts are saving the lives of children. They empower extended families to care for children when a parent cannot. Children who would otherwise be in the costly foster care system can remain in their own communities. The result is certainly better for the children and, without question, achieves enormous long-term savings for the state.

Another example of the ability of probate courts to promote cost-effective solutions to challenging social issues is Melissa's Project. A partnership between the probate courts and the Department of Mental Health and Addiction Services, the program helps conservators implement a support structure for individuals with mental illness living in the community. Melissa's Project has been enormously successful in keeping people out of hospitals and prisons at great savings to the state.

Considering that the probate courts are such a vital part of the safety net for Connecticut's most vulnerable citizens, self-sufficiency should not, in my view, be the goal. In the past, when the primary focus of probate court jurisdiction was decedents' estates, a user fee assessed on estate assets was a logical source of funding for the court. But today, the system requires an investment of funds from the state to carry out the important work that the General Assembly has assigned to it and to restructure the system to make it more efficient.

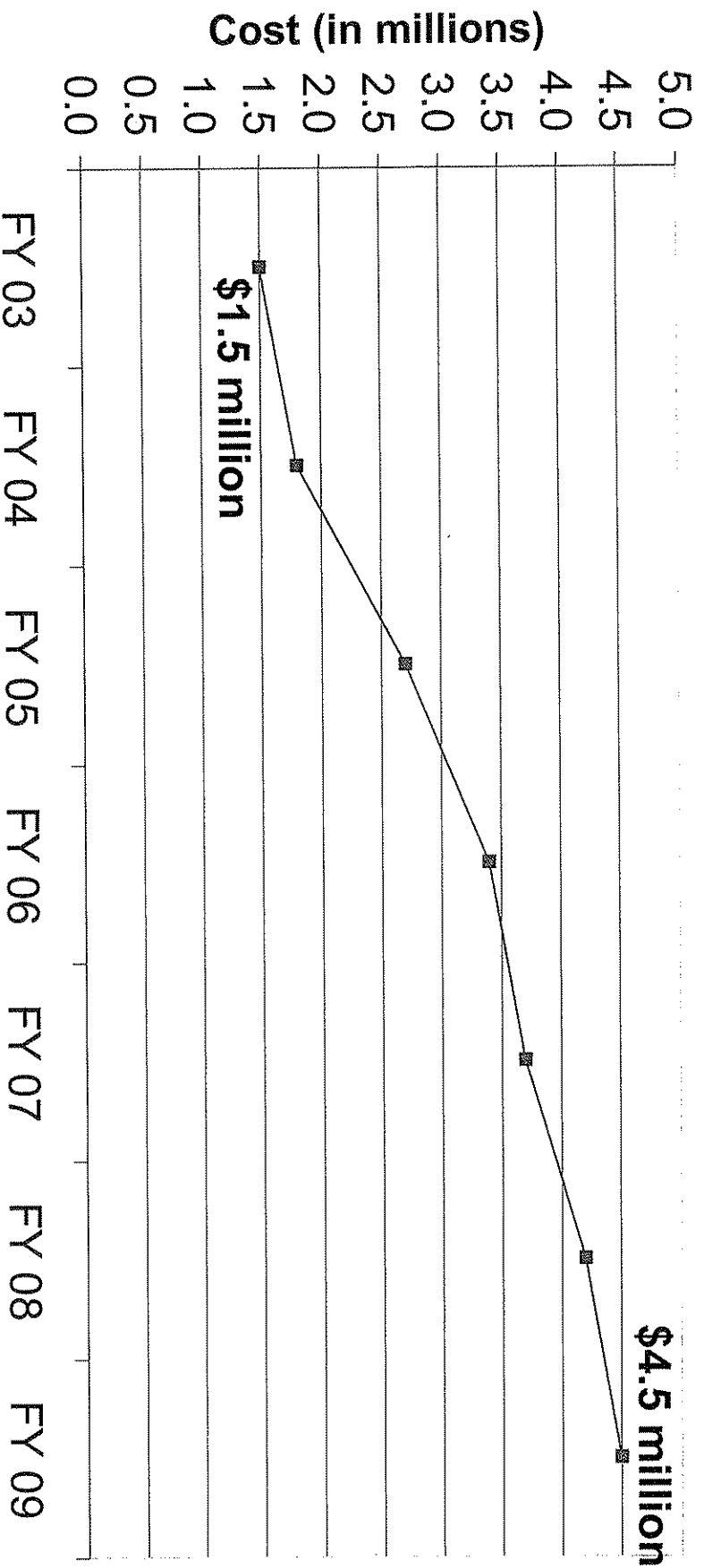
Thank you for your consideration.

## The Probate System's Changing Caseload



**16% increase in social service matters since 2002**

## Probate Indigency Costs



Indigency costs include cost for attorneys, marshals, doctors, conservators and waived entry fees. The average annual increase is 18%.